

RESTORE Act of 2007
(Responsible Electronic Surveillance That is Overseen, Reviewed and Effective)
Bill Summary

Security and Liberty: *The bill provides the Intelligence Community with effective tools to conduct surveillance of foreign targets outside the United States but restores Constitutional checks and balances that were not contained in the Protect America Act (PAA – the Administration’s FISA bill.)*

The RESTORE ACT:

- 1. Clarifies that No Court Warrant is Required to Intercept Communications of Non-United States Persons When Both Ends of the Communications are Outside the United States.**
- 2. Requires an Individualized Court Warrant from the FISA Court When Targeting Americans in the United States.** (Same as current law.)
- 3. Creates a Program of Court Authorized Targeting of Non-U.S. Persons Outside the United States.** Grants the Attorney General (AG) and the Director of National Intelligence (DNI) authority to apply to the FISA Court for a single order to conduct surveillance of multiple foreign targets for up to one year – but **RESTORES** the following checks and balances that are absent under the PAA:
 - a. **Court Review of Targeting Procedures.** The FISA Court must review targeting procedures on a quarterly basis to ensure that they are reasonably designed to protect Americans and target only people outside the United States. In emergencies, the FISA Court review may take place after the surveillance has begun – for up to 45 days. *DNI McConnell told Congress in September that he did not oppose FISA Court review of these targeting procedures.*
 - b. **Court Review of Minimization Procedures.** The FISA Court must review minimization procedures on a quarterly basis. *DNI McConnell told Congress in September that he did not oppose FISA Court review of these minimization procedures.*
 - c. **Court Review of Guidelines** on a quarterly basis to ensure that, when the government seeks to conduct electronic surveillance of Americans, the government obtains a traditional individualized warrant from the FISA Court.
- 4. Clarifies Ambiguous Language on Warrantless Domestic Searches.** The bill clarifies and eliminates ambiguous language in the PAA that appeared to authorize warrantless searches inside the United States, including physical searches of American homes, offices, computers, and medical records.

In a letter to Congress in September, Administration officials indicated that they did not intend their legislation to authorize such warrantless domestic searches and expressed a willingness to consider alternative language.

- 5. A RESTORE ACT Authorization May Not Be Used to Target Any Known U.S. Person.** If the government learns or has reason to know that the target of surveillance is a U.S. person (for example, an American traveling abroad), it cannot use this new authority.

Assistant Attorney General Ken Wainstein acknowledged to Congress in September that the PAA could be used by the Administration to target Americans abroad without a warrant, even U.S. soldiers serving in Iraq and Afghanistan.

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- 6. Limits Authority to Terrorism, Espionage, Sabotage, and Threats to National Security.** The Administration's bill allowed for surveillance for all foreign intelligence, including a broad category of information related to "foreign affairs." This bill allows the Intelligence Community to deal with the threats facing the United States from terrorism, espionage, sabotage, clandestine intelligence activities, and to collect information related to the national defense or security of the U.S., without authorizing the collection on the broad category of "foreign affairs."
- 7. Requires Regular Audits and Reports.** Requires audits every 120 days by the Justice Department Inspector General (DOJ IG) on communications collected under this authority and the number of U.S. persons identified in intelligence reports disseminated pursuant to this collection. These audits would be provided to the FISA Court and to Congress (Intelligence and Judiciary Committees).

The Administration's bill contained very limited reporting to Congress. During testimony, DNI McConnell said he did not oppose an Inspector General audit of the program to determine the scope of American communications swept up by this authority.

- 8. Requires an Audit of the President's Surveillance Program and Other Warrantless Surveillance Programs.** This audit mandates a report and documents related to these programs be provided to Congress in unclassified form with a classified annex. A separate provision requires that the President brief the intelligence committees on such programs within seven days after the date of enactment.
- 9. Requires Record-keeping of the Use of United States Persons Information.** Mandates that the Executive Branch record every instance in which the identity of a United States person whose communication was acquired by the Intelligence Community is disseminated within the Executive Branch and that it submit an annual report to Congress on such dissemination.
- 10. Adds Resources for FISA.** Adds funding for training, personnel and technology resources at DOJ, NSA and the FISA Court to speed the FISA process and to ensure that audits can be conducted expeditiously.
- 11. Reiterates the Exclusivity of FISA.** Includes House-passed bipartisan Schiff-Flake language stating that FISA is the exclusive means to conduct electronic surveillance of Americans for the purpose of foreign intelligence collection.
- 12. No Retroactive Immunity.** The bill is silent on retroactive immunity because the Administration has refused to provide Congress with documents on the specifics of the President's warrantless surveillance program. However, the bill does provide prospective immunity for those complying with court orders issued pursuant to this authority.
- 13. Establishes En Banc Review.** Allows the FISA Court to sit en banc. The FISA Court requested this, and the Administration does not oppose it.
- 14. Provides Sunset, Transition Procedures and Report on PAA.** Sunsets this new authority on December 31, 2009, when certain PATRIOT Act provisions also sunset. However, the legislation will allow for a transition from the existing warrants to the new ones to ensure that the Intelligence Community does not go "dark" on any surveillance. The Administration will be required to submit a report on U.S.-person information collected and disseminated under the PAA authorities.